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Filed : September 16, 2003

### **REMARKS**

The May 17, 2007 Office Action is based on pending Claims 1, 2, 5, 6, 9–15 and 19–25. By this Response, Applicant is amending Claims 1, 9, 11 and 12 and canceling Claims 21 and 25 without prejudice or disclaimer. Claims 2, 5, 6, 10, 13–15, 19, 20 and 22–24 remain as originally filed or as previously presented, and new Claim 26 has been added.

Thus, after entry of the foregoing amendments, Claims 1, 2, 5, 6, 9–15, 19, 20, 22–24 and 26 are pending and presented for further consideration. In view of the foregoing amendments and the remarks set forth below, Applicant submits that Claims 1, 2, 5, 6, 9–15, 19, 20, 22–24 and 26 are in condition for allowance.

### **SUMMARY OF OBJECTIONS AND REJECTIONS**

The Office Action rejects Claim 21 under 35 U.S.C. § 112, first and second paragraphs, as failing to comply with the written description requirement and as being indefinite.

Claims 1, 2, 5, 6, 9–15 and 19–25 are rejected under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 6,154,852 to Amundson et al. ("Amundson").

### **CHANGE IN POWER OF ATTORNEY AND CORRESPONDENCE ADDRESS**

Applicant notes that two requests for a change in power of attorney have been filed in this application (i.e., on May 16, 2007, and September 19, 2006). It appears, however, that neither of these submissions has been processed. Thus, correspondence in the present application continues to be sent to the wrong address and counsel. In view of the foregoing, Applicant respectfully requests that future correspondence in this application be sent to Customer No. 20,995.

### **CLAIM REJECTIONS UNDER 35 U.S.C. § 112**

The Office Action rejects Claim 21 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. In particular, the Office Action states that the specification does not recite "deleting the other of the plurality of primary copies of the data source data in the specification." The Office Action also rejects Claim 21 under 35 U.S.C. § 112, second paragraph, as being indefinite. In particular,

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the Office Action states that it is unclear "what is represented by 'deleting the other' and which component of primary copies of the data source data is deleted."

Although Applicant disagrees with these rejections and believes that the claim is sufficiently clear as previously recited, Applicant has canceled Claim 21 to expedite prosecution of the present application.

#### **CLAIM REJECTIONS UNDER 35 U.S.C. § 102(b)**

The Office Action rejects Claims 1, 2, 5, 6, 9–15, 20 and 22–24 as being anticipated by Amundson. In view of the foregoing amendments and for at least the reasons set forth below, Applicant respectfully disagrees and requests reconsideration of Claims 1, 2, 5, 6, 9–15, 20 and 22–24.

#### **Amended Independent Claim 1**

Focusing on amended independent Claim 1, in one embodiment of Applicant's invention a method is disclosed for transferring data in a multi-tiered storage system. The method includes performing a plurality of primary copies of data stored in a data source, wherein the performing of at least one of the copies includes: (i) dividing the data source data into first and second portions, and (ii) transferring the first and second portions of data from the data source to first and second storage media using first and second data streams, respectively.

The method further includes: receiving user input indicating whether or not the first and second data portions should be combined; determining if the first and second data portions can be combined by identifying the file types of data in the first and second data portions; and if the user input indicates that the first and second data portions should be combined, and if the first and second data portions can be combined, transferring the first and second data portions from the first and second storage media to a third storage medium using a third combined data stream.

Amundson does not disclose the method of amended independent Claim 1. Rather, Amundson appears to disclose backing up data (136) across multiple tape drives (118) in order to perform load balancing (see col. 3, lines 35–38). When the backed-up data is to be restored, a certain amount of the tapes drives (118) are selected to perform the recovery process to a direct access storage device (DASD)

(116) (see col. 12, lines 13–34). In certain circumstances, a unique token is associated with the object data to facilitate restoration of the object data (see, e.g., column 5, lines 25–32; col. 6, lines 1–14).

Amundson does not appear to disclose, among other things, dividing and transferring data having multiple file types to multiple storage media, receiving user input indicating if the data portions should be combined, and determining if the data portions can be combined based upon the multiple file types of the data in the first and second portions, as recited in amended Claim 1 and Applicant's specification (see, e.g., page 11, line 11 to page 12, line 12; page 14, line 14 to page 15, line 3).

Rather, Amundson appears to disclose using load balancing to backup up copies of data objects over a plurality of drives (see, e.g., col. 3, lines 50–61). The Amundson system then restores multiple pieces of a single data object based on a unique identifier associated with the pieces (see, e.g., col. 5, lines 25–32; col. 6, lines 1–6). In restoring its data, the Amundson system does not identify multiple file types represented by the data and then determine, from this identification, if the multiple data portions can be combined.

Applicant further notes that the amendment to Claim 1 includes importing similar limitations to those previously presented in canceled dependent Claim 25. The May 17, 2007 Office Action's support for rejecting Claim 25 is based on column 6, lines 35–38, of Amundson. Applicant notes, however, that this section of Amundson does not teach or suggest examining multiple file types of data portions to determine if the data portions can be combined. Rather, as demonstrated by the context of the citation (i.e., col. 6, lines 36–53), Amundson discusses a workload balancing feature for writing data to multiple devices in parallel. That is, the Amundson system discloses real-time performance evaluation and storage device selection to enhance system performance (see, e.g., col. 6, lines 50–53). Amundson does not look at the file types of data portions on different storage devices to determine if the portions can be combined and transferred in a single data stream to another storage device.

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Because Amundson does not disclose each element of amended independent Claim 1, Applicant asserts that Claim 1 is not anticipated by Amundson, and Applicant respectfully requests allowance of Claim 1.

**Amended Independent Claims 9, 11 and 12**

Amended independent Claims 9, 11 and 12 are believed to be patentably distinguished over Amundson for reasons similar to those set forth with respect to the patentability of independent Claim 1 and for the different aspects recited therein.

**Dependent Claims 2, 5, 6, 10, 13–15, 19, 20 and 22–24**

Claims 2, 5, 6, 13, 14 and 22–24 depend from amended independent Claim 1 and are believed to be patentably distinguished over Amundson for the reasons set forth above with respect to Claim 1 and for the additional features recited therein.

Claims 10, 15, 19 and 20 depend from amended independent Claim 9 and are believed to be patentably distinguished over Amundson for the reasons set forth above with respect to Claim 9 and for the additional features recited therein. For instance, dependent Claim 15 recites that the first storage medium has a faster access time than the third storage medium (which receives the combined data stream). Contrary to the assertion made by the Office Action, Amundson discloses just the opposite. That is, the Amundson system restores data from multiple tape devices to a direct access storage device (DASD) (116), which presumably has a faster access time than the tape devices (118) (see, e.g., col. 3, lines 22–34).

**NEW CLAIM 26**

New Claim 26 has been added to more fully define Applicant's invention and is believed to be fully distinguished over the prior art of record.

**RESCISSION OF ANY DISCLAIMERS AND REQUEST TO REVISIT ART**

The claims of the present application are different and possibly broader in scope than any previously pending claims in the present application or in any related application or issued claims in any related patent. In particular, in the present application, Applicant previously amended claims and/or present arguments over at least U.S. Patent No. 6,154,852, U.S. Patent Publication No. 2004-0210796 and 2006-

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0149889 and various 35 U.S.C. § 112 rejections. To the extent that any amendments or characterizations of the scope of any claim or referenced art could be construed as a disclaimer of any subject matter supported by the present disclosure, Applicant hereby rescinds and retracts such disclaimer. Accordingly, the above-listed references, or other listed or referenced art may need to be re-visited.

Moreover, although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution.

In addition, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

### **CONCLUSION**

In view of the foregoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested. If further issues remain, the Examiner is cordially invited to contact the undersigned such that the issues may be promptly resolved.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: 9/17/2007

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